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In re CSRBA (Coeur d'Alene)

Hedden-Nicely

10-21-2016

USA-CDAT Joint Mtn SJ

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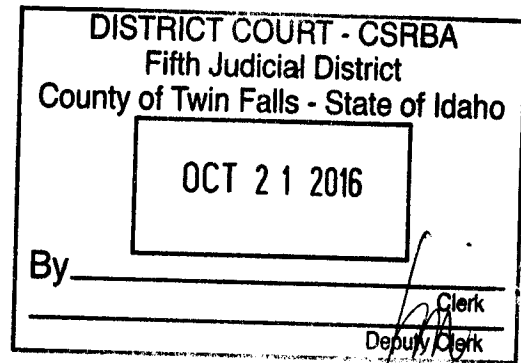
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**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

In Re the CSRBA

Case No. 49576

) Consolidated Subcase No. 91-7755
)
)
) **UNITED STATES' AND COEUR D'ALENE**
) **TRIBE'S JOINT MOTION FOR**
) **SUMMARY JUDGMENT**
)
)

Pursuant to the Idaho Rule of Civil Procedure 56(a) and the Court's Scheduling Orders in this Consolidated Subcase, the United States of America ("United States") and the Coeur d'Alene Tribe ("Tribe") hereby move this Court for an order granting summary judgment on entitlement to federal reserved water rights for the Coeur d'Alene Indian Reservation. Summary

judgment is appropriate here because there is no genuine dispute as to any material fact related to the question of entitlement, therefore, the United States and Tribe are entitled to judgment as a matter of law. This motion is supported by the United States' Memorandum in Support of Motion for Summary Judgment ("US Memorandum"), the Tribe's Memorandum in Support of Motion for Summary Judgment ("Tribe Memorandum"), and the United States and Tribe's Joint Statement of Undisputed Facts, including supporting Affidavits of Ian Smith, Dudley Reiser, Richard Hart, Cajetan Matheson, and Vanessa Boyd Willard and attachments thereto ("Facts") filed concurrently herewith.

As explained in the Memoranda and supported by the Facts, the United States and Tribe are entitled to an order declaring the following:

1. The United States as trustee and the Coeur d'Alene Tribe as beneficiary are entitled to federal reserved water rights to surface and groundwater to serve the purpose of the Coeur d'Alene Indian Reservation.

2. The purpose of the Coeur d'Alene Indian Reservation was, and continues to be, to provide a permanent homeland for the Coeur d'Alene people and any other Indians who reside thereon.

3. The water rights necessary to serve the purpose to provide a permanent homeland on the Coeur d'Alene Indian Reservation include the following: domestic, commercial, municipal and industrial; instream flows for fish habitat; irrigated agriculture; maintenance of lake levels in Coeur d'Alene Lake; and maintenance of wetlands, springs and seeps for game habitat and gathering activities.

4. The priority date of the water rights necessary to support the homeland purpose of the Coeur d'Alene Indian Reservation is time immemorial for traditional water uses that predate the

creation of the Reservation (domestic and municipal; instream flows for fish habitat; maintenance of lake levels in Coeur d'Alene Lake; and maintenance of wetlands, springs and seeps for game habitat and gathering activities).

5. The priority date of the water uses necessary to support the homeland purpose of the Coeur d'Alene Indian Reservation is November 8, 1873—the date the Reservation was established—for water uses that began generally at the time that the Reservation was created (commercial, industrial, and irrigated agriculture).

Based on the foregoing, the United States and Tribe move this Court for an order granting summary judgment on the issue of entitlement to the federal reserved water rights claimed by the United States on behalf of the Coeur d'Alene Tribe. Should the Court not grant all the relief requested by this motion, the United States and Tribe move, pursuant to I.R.C.P. 56(f), for an order stating those item(s) of material fact that are not genuinely in dispute and treating such fact(s) as established in the case.


Pursuant to I.R.C.P. 7(b)(3)(D), the United States and Tribe request and reserve oral argument on this motion.

DATED this 20th day of October, 2016.

By: 

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CERTIFICATE OF SERVICE

I certify that original copies of the *UNITED STATES' AND COEUR D'ALENE TRIBE'S JOINT MOTION FOR SUMMARY JUDGMENT*, *UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT*, and *UNITED STATES' AND COEUR D'ALENE TRIBE'S JOINT STATEMENT OF FACTS* with attachments were sent via Federal Express this 20th day of October, 2016 to:

Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

I certify that true and correct copies of the documents listed above were provided to the parties below on a DVD mailed on this 20th day of October, 2016.

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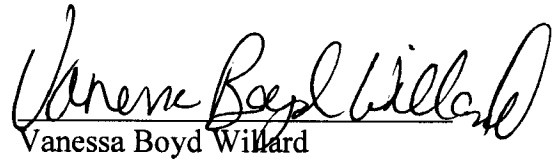
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